Supreme Court of the United States.

No. 97.—October Term, 1906.

Alabama and Vicksburg Railway Company and Robert H. Thompson and Thomas A. McWillie, its Sureties, Plaintiffs in Error, *vs.* The Railroad Commission of the State of Mississippi. } In error to the Supreme Court of the State of Mississippi.

[December 17, 1906.]

On November 16, 1903, the Railroad Commission of Mississippi, by written order, directed the Alabama and Vicksburg Railway Company, hereinafter called the Vicksburg company, to put into effect, over its line of road from Vicksburg to Meridian, a flat rate of 3½ cents per 100 pounds on grain and grain products. December 3, 1903, an application was made by the railway company to the chancellor of the Fifth Chancery District of the State to restrain the enforcement of this order. July 11, 1904, a temporary injunction issued on the filing of the bill was dissolved and the bill dismissed. On appeal to the Supreme Court of the State this decree of the chancellor was affirmed, (86 Miss. 667,) and thereupon this writ of error was sued out.

Mr. Justice Brewer delivered the opinion of the Court.

The facts in this case are few. The company made what it called a "rebilling rate" of 3½ cents per 100 pounds on grain and grain products shipped from Vicksburg to Meridian, that rate, however, being applicable only in case of shipments over the Vicksburg, Shreveport and Pacific Railroad, hereinafter called the Shreveport road. Instead of being enforced as solely a rebilling rate, the Vicksburg merchant who received a carload of grain or grain products over the Shreveport road was permitted to either forward it over the plaintiff's road to Meridian, or at any time within ninety days in lieu thereof send a similar carload, no matter whence received, from Vicksburg to Meridian at the same rate. It was in consequence of this effort on the part of the plaintiff to favor shippers who brought grain to Vicksburg over the Shreveport road that the railroad commission made the order declaring that all grain products shipped from Vicksburg to Meridian should be at the same rate, 3½ cents per 100 pounds. The order of the commission merely meant this: If a Vicksburg merchant who received

a carload of grain over the Shreveport road was permitted by the railway company to ship over the Vicksburg road to Meridian any other carload at 3½ cents per 100 pounds, every other merchant in Vicksburg should be permitted to ship at the same rate, although he had had no dealings with the Shreveport company. It is unnecessary to inquire whether the order could be sustained if it appeared that the plaintiff received only 3½ cents as its share of a total rate on through shipments to Meridian from the Northwest by the Shreveport road; for here, under the guise of a rebilling rate, the Vicksburg merchant who dealt with this Western road was given a rate of 3½ per cent on any grain that he might see fit to ship to Meridian. While it may be true that a local railway's share of an interstate rate may not be a legitimate basis upon which a State railroad commission can establish and enforce a purely local rate, yet whenever, under the guise or pretence of a rebilling rate, some merchants are given a low local rate the commission is justified in making that rate the rate for all. It is not bound to inquire whether it furnishes adequate return to the railway company, for the State may insist upon equality, to be enforced under the same conditions against all who perform a public or quasi public service. When voluntarily the Vicksburg company established a local rate of 3½ per cent from Vicksburg to Meridian for those who had within 90 days made a shipment over the Shreveport road, it estopped itself from complaining of an order making that rate applicable to all shipments, no matter whence they arose, and in favor of all merchants, whether those transporting over the Shreveport road or not.

We are not unaware of our decision in *Texas & Pacific Railway* v. *Interstate Commerce Commission*, 162 U. S. 197, in which, on review of the interstate commerce act, we held that a mere inequality of rate was not always proof of undue discrimination, but we were passing upon an act of Congress and seeking to ascertain its intent and scope. There was no intimation that it was not within the power of Congress to prescribe an absolute equality of rate. In the present case we are not construing an act of the State of Mississippi or passing upon the powers which by it are given to the State railroad commission. Those matters are settled by the decision of the Supreme Court of the State, and the question we have to consider is the power of the State to enforce an equality of local rates as between all parties shipping for the same distance over the same road. That a State has such power cannot be doubted, and it cannot be thwarted by any action of a railroad company which does not involve an actual interstate shipment, although done with a view of promoting the business interests of the company. Even if a State may not compel a railroad company to do business at a loss and conceding that a railroad company may insist, as against the power of the State, upon the right to establish such rates as

will afford reasonable compensation for the services rendered, yet when it voluntarily establishes local rates for some shippers it cannot resist the power of the State to enforce the same rates for all. The State may insist upon equality as between all its citizens, and that equality cannot be defeated in respect to any local shipments by arrangements made with or to favor outside companies.

We see no error in the ruling of the Supreme Court of the State of Mississippi, and its judgment is

Affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.